

FEB 28 2007

67,010-005  
H2602-FN

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application: Rogan, et al.  
 Serial No.: 09/924,372  
 Filed: 08/08/2001  
 Group Art Unit: 3621  
 Examiner: Bayat, Bradley B.  
 For: METHOD AND SYSTEM FOR ELECTRONICALLY  
 PROCESSING TRANSACTIONS

**REPLY BRIEF**

Mail Stop AF  
 Commissioner For Patents  
 P. O. Box 1450  
 Alexandria, VA 22313-1450

Dear Sir:

This is in reply to the Examiner's Answer mailed on December 28, 2006.

The Examiner's Answer does not address the main point at issue on appeal. That is, the Examiner fails to explain how it is permissible to modify the *Savino, et al.* reference in a manner that is directly contrary to the express teachings of that reference. At best, the Examiner accuses Applicant of taking statements of the *Savino, et al.* reference "out of context." Applicant has quoted sufficient evidence from the *Savino, et al.* reference to support Applicant's position regarding what the *Savino, et al.* reference actually teaches. The Examiner has not explained how Applicant's position, which is that the *Savino, et al.* reference cannot be modified as the Examiner proposes because that is inconsistent with the intended result of the reference, should not prevail on appeal.

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The Examiner mentions various cases regarding "analogous art," "suggestion-motivation-teaching" and "attacking references individually" but all of those cases are inapposite to the issue on appeal. The fact is that there is no permissible modification of the *Savino, et al.* reference that goes directly contrary to the express teachings of that reference (as pointed out by Applicant in its opening brief), when attempting to manufacture a *prima facie* case of obviousness under 35 U.S.C. §103. A reference cannot be modified in a manner that is directly contrary to its express teachings or that would undue the intended result of the teachings of that reference. Such a modification cannot be made and there is no *prima facie* case of obviousness. Here, the Examiner is proposing to modify the *Savino, et al.* reference to do something that the reference expressly says should not be done. Specifically, the *Savino, et al.* reference teaches that purchase and shipping information is only entered by the customer. The Examiner proposes to modify the *Savino, et al.* reference to make it consistent with Applicant's claims, which include other information beyond that entered by a customer. In other words, Applicant's claims require information to be added by someone other than a customer and that is directly contrary to the intended result of the *Savino, et al.* reference. Therefore, the Examiner's proposed combinations and resulting modification to the *Savino, et al.* reference cannot be made. There is no *prima facie* case of obviousness.

It is irrelevant what the *Sandhu, et al.* reference (or any other reference for that matter) teaches regarding any suggestion for modifying the *Savino, et al.* reference. It is not possible to modify a reference in a manner that is directly contrary to its express teachings because that would undue the intended result of that reference's teachings.

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Such a modification is not permissible for attempting to manufacture a *prima facie* case of obviousness under 35 U.S.C. §103.

The rejections must be reversed.

Respectfully submitted,

CARLSON, GASKEY & OLDS

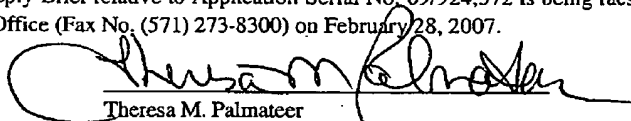
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Dated: February 28, 2007

**CERTIFICATE OF FACSIMILE**

I hereby certify that this Reply Brief relative to Application Serial No. 09/924,372 is being facsimile transmitted to the Patent and Trademark Office (Fax No. (571) 273-8300) on February 28, 2007.

  
Theresa M. Palmateer

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